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PORTUGAL (MACAU)

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1. Macau, a territory under Portuguese administration, lies on the South China coast around 65 km to the west of Hong Kong.

2. The Territory of Macau includes the Peninsula of Macau (where the "City of the Name of God" is located) and the islands of Taipa and Coloane, covering a total surface area of approximately 18 square kilometres.

3. Macau's geographical location, its traditional openness and its economic, social and cultural environment have attracted and facilitated the coexistence of extremely varied cultures, languages and religions.

4. According to the last (13th) General Population Census taken in 1991 (Censos '91), the total resident population stood at 355,693 inhabitants with an estimated increase to 381,000 inhabitants by the end of 1992.

5. The composition of the population and relative standing of the main ethnic and cultural, linguistic and religious groups can be seen in the XIIIth Population Census/IIIrd Housing Census Global Results, annexed to this report*, and in the information given with regard to article 27 of the International Covenant on Civil and Political Rights.

6. The establishment of the Portuguese in Macau dates back to 1557.

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* Available for consultation in the files of the Centre for Human Rights.

7. Currently, the territory's situation is defined in the Portuguese Constitution and in the Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macau (usually called the Sino-Portuguese Joint Declaration*) signed in Beijing on 13 April 1987. In this it is stated that Macau forms part of China's territory and that the Government of the People's Republic of China shall resume sovereignty over Macau on 20 December 1999. Under the terms of this agreement, Portugal shall be responsible for the administration of Macau during the "transition period" leading up to 19 December 1999.

8. Macau's legal system is based on the Romano-Germanic branch of continental European law. It is characterized by the fact that laws proper are, by far, the most important source of law, and the relevant legislation is inserted in specific legal codes known as the five "big codes": the Civil Code*, the Commercial Code*, the Civil Procedure Code*, the Criminal Code* and the Criminal Procedure Code*.

9. Macau's constitutional organization has undergone major changes over the territory's history. Initially, there was a system of "mixed jurisdiction" (from 1557 to 1822), followed by a "colonial period" (1822 to 1976) and latterly a "transition period" (lasting from 1976 until 19 December 1999). A constant feature of Macau's history has been the ongoing cooperation displayed between Portugal and China. In addition to this, Macau has always enjoyed a high degree of autonomy.

10. Right from the start of the Portuguese settlement of Macau, this high degree of autonomy was reflected in the administrative organization of the Territory. The post of Governor was only introduced in the mid-seventeenth century but, in fact, until 1783, when the Royal Provisions 1/ were approved, the Portuguese settlement of Macau was governed by the politically powerful Senado. The Senado, a body based on the medieval Portuguese tradition of local government, represented Portuguese interests through the offices of three councillors elected for three years by the Portuguese population, two judges and one procurator. The Senado was vested with political, administrative and judicial powers.

11. Even during the "colonial period", Macau enjoyed a high degree of political-administrative autonomy. Firstly, the agents of central Portuguese power were located far away in Goa. Secondly, whenever there were crises in what were generally healthy relations with the Chinese authorities, the emphasis was on finding quick local solutions. Finally, there were deeply rooted traditions of autonomy.

12. At present, Macau is in the course of the "transition period" which will end when China resumes full sovereignty over the territory on 20 December 1999 (Sino-Portuguese Joint Declaration, art. 1). Following this date, and for a period or 50 years, the People's Republic of China undertakes to uphold the various principles, policies and provisions which, under the principle of "one country, two systems", are included in the Sino-Portuguese Joint Declaration (art. 2 (12)) and to enshrine them in a Basic Law of the Macau Special Administrative Region of the People's Republic of China, approved by the First Session of the Eighth National People's Congress of the People's Republic of China on 31 March 1993*.

13. With regard to Macau's legal system, article 2 (4), of the Sino-Portuguese Joint Declaration states that "the current social and economic system will remain unchanged, and so will the life-style", and that "the laws currently in force in Macau will remain basically unchanged". The Joint Declaration also makes provision that "the laws, decree-laws, administrative regulations and other normative acts previously in force in Macau shall be maintained, save for any whatever therein that may contravene the Basic Law or subject to any amendment by the Macau Special Administrative Region legislature" following the establishment of the Macau Special Administrative Region (annex I, sect. III, para. 2).

14. The same principle of the continuity of Macau's legal system in the Special Administrative Region is enshrined in the Basic Law of the Macau Special Administrative Region. Here article 8 states that "the laws, decree-laws, administrative regulations and other normative acts previously in force in Macau shall be maintained, except for any that contravenes this Law, or subject to any amendment by the legislature or other relevant organs of the Macau Special Administrative Region in accordance with legal procedures". The principle of continuity also applies to international conventions to which China is not party, as stipulated in annex I, section VIII, paragraph 3, of the Sino-Portuguese Joint Declaration: "international agreements to which the People's Republic of China is not a party but which are implemented in Macau may continue to be implemented". This rule is also repeated in article 138, paragraph 2, of the Basic Law of the Macau Special Administrative Region.

15. The Sino-Portuguese Joint Declaration also stipulates specific fundamental rights. In article 2 (4), provision is made accordingly: "All rights and freedoms of the inhabitants and other persons in Macau, including those of the person, of speech, of the press, of assembly, of association, of travel and movement, of strike, of choice of occupation, of academic research, of religion and belief, of communication and the ownership of property will be ensured by law in the Macau Special Administrative Region." In annex I, section V, paragraph 1, of the Sino-Portuguese Joint Declaration, this safeguard is presented in greater detail: "The Macau Special Administrative Region shall, according to the law, ensure the rights and freedoms of the inhabitants and other persons in Macau as provided for by the laws previously in force in Macau, including freedoms of the person, of the press, of assembly, of demonstration, of association (e.g. to form and join non-official associations), to form and join trade unions, of travel and movement, of choice of occupation and work, of strike, of religion and belief, of education and academic research; inviolability of the home and communication, and the right to have access to law and courts, rights concerning the ownership of private property and of enterprises and their transfer and inheritance, and to obtain appropriate compensation for lawful deprivation to be paid without undue delay; freedom to marry and the right to form and raise a family freely." Paragraph 2 of the same section merits special attention as it enshrines the principles of equality and non-discrimination, stating that "the inhabitants and other persons in the Macau Special Administrative Region shall all be equal before the law, and shall be free from discrimination irrespective of nationality, descent, sex, race, language, religion, political or ideological belief, educational level, economic status or social conditions".

16. In mid-1992, Portugal and the People's Republic of China began negotiations in the Sino-Portuguese Joint Liaison Group concerning the extension to Macau of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights. An agreement was reached in October 1992 when a memorandum on the subject was signed by the leaders of the Portuguese and Chinese teams of the Sino-Portuguese Joint Liaison Group. By the terms of this agreement, Portugal undertook to extend the two Covenants to Macau by means of a proposed Resolution of the Assembly of the Portuguese Republic. The People's Republic of China undertook to guarantee, through a clause expressly included for this end in the Basic Law of the Macau Special Administrative Region, the continuity of the two Covenants after 19 December 1999.

17. The Assembly of the Portuguese Republic implemented Portugal's side of the agreement by approving Resolution No. 41/92 of 31 December, published in the Official Gazette (Boletim Oficial) of Macau, No. 52, 3rd Supplement, of 31 December 1992*, going ahead with the extension of the two Covenants to the territory of Macau with only four restrictions. (These restrictions are explained in the report on the International Covenant on Civil and Political Rights). The Declaration extending the application of the Covenants to Macau, approved by the Assembly of the Portuguese Republic's Resolution No. 41/92, was lodged by Portugal with the Secretary-General of the United Nations on 27 April 1993.

18. In turn, the People's Republic of China observed its side of the agreement reached in the Joint Liaison Group by including in the Basic Law of the Macau Special Administrative Region a clause which anticipates that "the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Macau shall remain in force and shall be implemented through the laws of the Macau Special Administrative Region. The rights and freedoms enjoyed by Macau residents shall not be restricted except as prescribed by law. Such restrictions shall not contravene the provisions of the first paragraph of this Article" (art. 40).

19. In response to specific questions raised by the United Nations Human Rights Committee on the regime for civil and political rights in force in Macau, the following points should be noted.

20. The nature of the sources of norms enshrining protected rights. Article 292 of the Portuguese Constitution states that the Territory of Macau shall be governed by a statute adequate to its special situation as anticipated in the Organic Statute of Macau (hereinafter referred to as OS) approved by Law 1/76 of 17 February with the amendments introduced by Law 53/79 of 14 September and Law 13/90 of 10 May*. It should be noted that the OS is a constitutional law. In turn, article 2 of the OS includes a direct transfer to Macau's system of the principles of rights, freedoms and safeguards, i.e. the Fundamental Principles of Section I ("General Principles") and Section II ("Rights, Freedoms and Safeguards") of Part I ("Fundamental Rights and Duties"), established in the Portuguese Constitution. The same conclusion can be drawn from the provision made in article 11, paragraph 1 d), of the OS.

21. The rights, freedoms and safeguards of the Portuguese Constitution - which not only takes into account the civil and political rights included int he Covenant but exceeds them on several points - are applied in Macau's legal system under the provisions of article 2 of the OS. These rights, freedoms and safeguards are not applied in the exact same terms and with the same content as in Portugal due to a few limitations arising from special precepts of the OS reflecting Macau's specific and different situation. The exercise of these rights, freedoms and safeguards is limited or restricted in Macau under the terms of article 18, paragraphs 2 and 3, of the Portuguese Constitution in which it is stated that:

> "2. Rights, freedoms and safeguards may be restricted by law in only those cases expressly provided for in the Constitution. Restrictions shall be limited to what is necessary to safeguard other rights or interests protected by the Constitution.
>
> "3. Laws restricting rights, freedoms and safeguards shall be general and abstract in character, shall not have retroactive effects, and shall not limit in extent and scope the essential content of constitution provisions."

22. Article 19 of the Portuguese Constitution is also in force in Macau, allowing the organs of supreme authority to suspend the exercise of rights, freedoms and safeguards only in the case of a state of siege or a state of emergency declared in the form laid down in the Constitution. The Governor of Macau also has the power to take the necessary measures to restore public order anywhere in Macau on the advice of the Consultative Council. Should it be necessary to restrict or suspend the exercise of constitutional rights, freedoms and safeguards, the advice of the Legislative Assembly must first be sought and the President of the Republic informed as soon as possible (OS, art. 11, para. 1 d)).

23. In turn, article 5, paragraph 2, of the Assembly of the Republic's Resolution No. 41/92 of 31 December, published in the Official Gazette of Macau, No. 52, 3rd Supplement, of 31 December 1992, applying the two Covenants to Macau, states that: "Fundamental rights in Macau shall not be restricted unless as prescribed by law and these restrictions may not exceed the applicable provisions of the Covenants [on Civil and Political Rights and on Economic, Social and Cultural Rights]."

24. The limitations and restrictions on the exercise of these rights enshrined in locally produced legislation regulating fundamental rights have, moreover, been considerably fewer than those referred to in the Covenant.

25. This is the case with Law 7/90/M of 6 August (The Press Law*) which, in article 4, paragraph 3, establishes that "limits on press freedom shall occur only under the terms of the provisions of this law and those imposed by general law to safeguard the moral and physical integrity of the people and any examination or application of these shall be effected by the courts".

26. Possibility of the provisions of the Covenant being directly applicable and invoked. In both Macau and Portugal, the same constitutional rules regarding the relationship between international and domestic law are in

force, namely article 8 of the Portuguese Constitution which establishes the principle of primacy of international law over ordinary domestic law. Thus the precepts of the Covenant are applied and invoked under the same terms as in Portugal, although it should be noted that article 8, paragraph 2, of the Portuguese Constitution establishes a regime for the automatic acceptance of the norms of international conventions.

27. Article 5, paragraph 1, of the Assembly of the Republic's Resolution No. 41/92 of 31 December, establishes that: "The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights applicable to Macau shall be implemented in Macau, namely through specific laws issued by the Territory's own organs of government." Nevertheless, this provision does not, and could not, taking into account the general principles of the hierarchy of sources of law, change in any way the constitutional norms regarding whether or not the provisions of the Covenant can be directly applied or invoked. This article is intended to emphasize the need for those provisions of the Covenant(s) applicable to Macau to be drafted by local legislating bodies, on the one hand implying that these powers should be transferred from Portugal to Macau, 2/ and on the other highlighting the political objective of localizing legislation.

28. Administrative, judicial and other bodies with relevance to human rights. This point is dealt with in the report on the International Covenant on Civil and Political Rights which should be consulted to avoid repetition.

29. Remedies available to individuals whose rights have been violated. Of the principle forms of remedies available to individuals whose rights have been violated, the following deserve mention:

(a) A complaint lodged with the Public Information and Assistance Centre (PIAC);

(b) A complaint lodged with the High Commission against Corruption and Administrative Illegality;

(c) An administrative complaint (reclamação administrativa);

(d) Appeal for an administrative review;

(e) Appeal for a judicial review of administrative action;

(f) Appeal to the Constitutional Court from an individual case under litigation;

(g) Support appeal (recurso de amparo).

This is discussed further in the information provided on article 2 of the International Covenant on Civil and Political Rights.

Notes

1/ The Royal Provisions of 4 April 1783 were issued by the Portuguese Crown with the main objective of transferring to the Governor of Macau the powers required to make him the most important figure in Macau's political life. One of the orders they contained was that the Macau Senado should submit its accounts to the Governor and the Magistrate and that it should not take any decision without consulting the Governor. Thus the Governor came to play a compulsory role in all affairs concerning the Government of the Territory and was entitled to veto Senado decisions, reinforcing central Portuguese power in Macau.

2/ These transfers of legislative powers represent one of the most important factors in Macau's progressive autonomy which arose from the changes to the OS created by Law 53/79 of 14 September and by Law 13/90 of 10 May (texts with the Secretariat).